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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,716	04/02/2004	Eric Evert Voogt	90000-A	9430

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,716

Applicant(s)

VOOGT, ERIC EVERT

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,17,36,37 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,17,36,37 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau. (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 17, 36, 37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP 03098515 A to Fujita.

Regarding Claims 1 and 36, Fujita teaches a plant support for use with an open-topped plant container (Fujita Fig. 2 (a) #3) for a growing plant (Fujita #5), stiff linear material (Fujita English translation page 3 line 5) having a rectangular or trapezoid shape and having a 90 degree bend (Fujita Fig. 2(a) #1) between parts of the loop thereby forming a plant support member (Fujita #1 vertical portion) and an anchor member (Fujita #1 horizontal portion) each made up of a pair of elongated rods cross-connected with a connecting rod at the end of the pair of rods remote from the bend (see attached Fujita Fig. 1), the plant support member and the anchor member thereby being rigidly and permanently attached to each other at the bend; the plant support member having a generally vertical orientation and having a lower end at the bend and an upper end remote from the lower end, the connecting rod of the plant support member being adjacent to the upper end and grippable (i.e. capable of being gripped) by hand; and the anchor member forming a base element extending generally horizontally, whereby the base element may be positioned beneath a mass of growth

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medium (Fujita Fig. 2(b) #4) in the container with the plant support member extending vertically from the mass of growth medium to facilitate support of a plant growing in the mass, and to facilitate lifting and transportation of the container filled with the mass of growth medium via the part of the plant support member that is grippable by hand (Fujita teaches the plant support member is securely positioned inside the plant container which would allow one to carry the combination by gripping the top of the element #1).

Fujita is silent on explicitly teaching a single endless loop. Fujita teaches a series of loops consisting only of loops (Fujita Fig. 1) and Fujita teaches it is known to vary the number of rods used (Fujita English translation page 5 line 6-7). Fujita teaches it is general knowledge of one of ordinary skill in the art to have an understanding of the particular plant that is going to utilize the device in order to determine the width of the support (Fujita English translation page 5 line 12). It would have been obvious to one of ordinary skill in the art to modify the teaching of Fujita Fig. 2 to fabricate only one endless loop based on the size of the plant and the plant pot it was being used with. The modification is merely a change in size to accommodated different plant pot sizes and does not present a patentably distinct limitation.

Regarding Claim 17, Fujita as modified teaches the stiff material is selected from the group consisting of metal wire, plastic-coated metal wire, metal rod, plastic-coated metal rod, molded plastic rod, and molded fiberglass rod (Fujita page 2, right hand column, second paragraph from the end).

Regarding Claims 37 and 40, Fujita as modified teaches an open-topped plant container and the base member extends horizontally from the lower end of the plant support member a distance at least (Which means it can be more than 20%) 20 % of the width (Fujita Fig. 2a and English translation page 7 first paragraph), but is silent on the plant pot being round thus having a diameter. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Fujita at the time of the invention since the modification is merely a change in shape/size of plant pot selected based on the size of the plant variety or a desire aesthetic effect. Round flower pots are old and notoriously well-know in the art.

Response to Arguments

Applicant's arguments with respect to claims 1, 17, 36, 37, 40 have been considered but are moot in view of the new ground(s) of rejection.

Examiner re-iterates in response to applicant's argument that applicant's device is more for the application of lifting the plant containers then it is for used in transplanting or structural support for the plant branches; however, **a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.**

Since Fujita teaches that the plant support member is securely positioned into the plant pot it is inherently capable of performing the lifting function presented by applicant (Fujita English Translation page 4 line 5-7).

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent D469,803; U.S. Patent No. 4,979,759; U.S. Patent No. 3,318,453.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

17 May 2006